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STATEMENT OF ROBERT L. HIRTLE
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CHIROPRACTIC ASSOCIATION
ON
SB 1252, AN ACT REQUIRING
INFORMED CONSENT FOR CHIROPRACTIC TREATMENT

Senator Handley, Representative Sayers and Members of the Committee: I am Attorney Robert L. Hirtle of Hartford. I have been General Counsel to the Connecticut Chiropractic Association since 1971 and during that time I have defended most of the malpractice claims made against chiropractors in this State.

Every human being has a right to determine what shall be done with one's own body. Any healthcare practitioner who touches a patient's body without the patient's consent commits an assault under the Common Law and an act of malpractice under Connecticut law. The only exception is an emergency where the patient is unconscious. Even where the medical procedure is skillfully performed and generally beneficial, the healthcare practitioner who performs it commits at least a technical assault.

Connecticut courts require more than mere consent. Informed Consent is required. Informed consent can be given by the patient only after the patient has information regarding the nature of the proposed treatment, the alternative forms of treatment, and the risks, if any, associated with the treatment. The failure to obtain informed consent will impose liability on the healthcare practitioner under the legal theory of negligence. If the failure to obtain the patient's informed consent is proven to be a proximate cause of injury to the patient, the patient may be awarded damages against the healthcare practitioner.

The process of informed consent may be oral and/or in writing. The oral process begins with the examination of the patient wherein the healthcare practitioner explains what the exam will consist of and obtain the patient's consent to proceed. The written process is used after a diagnosis has been determined and a treatment plan is recommended to the patient. The Connecticut Chiropractic

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Association has developed and recommends the use of a written consent form for this purpose. (See Attachment)

The issue of informed consent usually arises in a medical malpractice case in a situation where there is a dispute over whether the healthcare practitioner has disclosed the necessary material information, including risks to the patient. The legal standard is whether a reasonably prudent patient would have consented to treatment if all the material information had been disclosed. Even if the court or jury finds that the patient would not have consented to treatment, there must be a finding of injury to the patient which is a proximate cause of the lack of informed consent for money damages to be awarded.

These standards under the Common Law and under the decided case law of Connecticut apply to all healthcare practitioners. Each healthcare practitioner is judged by the standard of due care, skill and diligence for their particular field of medicine or healthcare. A chiropractor is judged by the standards of care for chiropractors.

S.B. 1252 singles out chiropractors from all other healthcare practitioners for singular treatment. There is nothing in the Bill as drafted which would preserve the oral consent process for physical examinations. Good practice recommends the use of written informed consent by all healthcare practitioners.

The failure to use written informed consent results in a dispute in malpractice litigation of what risks the doctor discussed with the patient. It is in the doctor's best interest to have a written consent form signed by the patient. Failure to use the written consent form places the doctor at unnecessary risk.

If the Legislature were to impose the requirements of this Bill it should apply the same legal standard to all healthcare providers. The Bill should also preserve the oral consent procedure for the physical examination process. S.B. 1252, at present, is poorly drafted and discriminatory by singling out chiropractors to follow a special standard on informed consent, not required by all other healthcare providers.